

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

CRIMINAL NO. 1: CR-02-261-06

v.

⋮
⋮
⋮

RAMON L. FIGUEROA

MEMORANDUM AND ORDER

On March 6, 2006, Petitioner filed a motion pursuant to 28 U.S.C. § 2255 in which he moves to vacate his sentence. On March 9, 2006, this court entered an administrative order¹ with notice of limitations of filing motions under 28 U.S.C. § 2255. Attached to the administrative order was a notice of election to be completed and returned by Petitioner. On March 27, 2006, Petitioner filed a response to the administrative order. He did not file a notice of election but, in his response, asserts that he does not want his sentence vacated but does seek to have his term of supervised release vacated, alleging that the term of supervised release constitutes double jeopardy.

Pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings, this court can preliminarily examine the motion and the record and make a determination that the moving party is not entitled to relief and dismiss the motion. The motion filed by Petitioner will be dismissed for the following reasons.

Petitioner was sentenced by this court on March 10, 2004. He did not take a direct appeal of his sentence. His time for filing a motion pursuant to 28

¹Said order was issued pursuant to *Mason v. Myers*, 208 F.3d 414 (3d Cir. 2000) and *United States v. Miller*, 197 F.3d 644 (3d Cir. 1999).

U.S.C. § 2255 expired on or about March 20, 2005. Title 28 U.S.C. § 2255 provides a one-year period of limitation in which to file a motion under that statute. As applied to Petitioner, the limitation period began to run on the date his conviction became final. Not having taken a direct appeal, the limitation period began to run ten days after the entry of his judgment of conviction. Thus, the motion will be dismissed as untimely.

IT IS THEREFORE ORDERED THAT:

- 1) Petitioner is granted leave to proceed *in forma pauperis*.
- 2) The motion filed pursuant to 28 U.S.C. § 2255 is dismissed as untimely.
- 3) This court declines to issue a certificate of appealability.
- 4) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: March 30, 2006.